

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

TIMBER POINT PROPERTIES III, LLC,)
)
Plaintiff,)
)
v.) Case No. 13-cv-03449-REL
)
BANK OF AMERICA, N.A., et al.,)
)
Defendants.)

MOTION TO STAY RULE 26(f) CONFERENCE AND DISCOVERY
OF DEFENDANTS BANK OF AMERICA, N.A.,
MILLSAP & SINGER, P.C. AND MILLSAP & SINGER, LLC

Defendants Bank of America, N.A., Millsap & Singer, P.C., and Millsap & Singer, LLC, through the undersigned counsel, request that this Court stay all discovery proceedings, including the Rule 26(f) conference until resolution of Defendants' pending Motion to Dismiss.

1. Plaintiffs initially filed this lawsuit on November 5, 2013 in the Circuit Court of Taney County, Missouri. Plaintiff's Amended Petition, which challenges Bank of America, N.A.'s status as a secured creditor with respect to real property located in Taney County, Missouri, seeks relief for Declaratory Judgment, Quiet Title, and Preliminary and Permanent Injunctions. On November 29, 2013, Defendants removed Plaintiff's lawsuit to this Court and also filed a Motion to Dismiss and a memorandum in support thereof. As outlined in Defendants' Motion to Dismiss, Plaintiff claims superior title to the real property that is the subject of this lawsuit pursuant to a quit-claim deed recorded well after Bank of America, N.A.'s Deed of Trust. Defendants' Motion to Dismiss and the memorandum in support thereof, were filed on November 29, 2013. Pursuant to Local Rule 7.0(d), Plaintiff had fourteen days to file a response to Defendants' Motion to Dismiss. Plaintiff failed to file a response within the above

deadline and it further failed to seek an extension of same from Defendants' Counsel or this Court.

2. Plaintiff has issued voluminous discovery requests including forty-four interrogatories directed to each and every Defendant and forty-six requests for production of documents, many of which are propounded in pursuit the widely discredited "show-me-the-note" theory and, or improperly seek information regarding the securitization of Bank of America, N.A.'s Promissory Note, information that this District has repeatedly held is not a proper subject of discovery where, as here, the requesting party is not a party to securitized loan trust. See e.g. *White v. Federal Home Loan Mortgage Corp., et al.*, No. 12-00452-CV-W-DW, Doc. No. 78 (W.D. Mo. Fed. 12, 2013); *Offield, et al. v. Federal Nat'l Mortgage Ass'n, et al.*, 11-00841-CV-W-BP, Doc. No. 85 (Mar. 14, 2013); and *Lisenbee v. Deutsche Bank National Trust*, 11-00597-CV-W-REL, Doc. No. 100 (March 18, 2013). The Determination of the legal issues presented in Defendants' pending Motion to Dismiss does not require discovery as Plaintiff's claims are conclusory and fail to meet even basic pleading requirements under Rule 12(b)(6).

3. This Court has inherent authority to stay discover, the Rule 26(f) conference, and related deadlines in the interest of judicial efficiency and for the interest of the parties. See e.g. *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). As noted in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), due to the fact that discovery can be "wide-ranging, time-consuming" and involve "considerable cost," staying discovery until the disposition of threshold dispositive issues is warranted. *Id.* at 817, n. 29.

4. The proposed stay will obviate the time and expense necessary to address the propriety of Plaintiff's discovery requests in advance of this Court's ruling on the pending dispositive motion. Any resulting delay in the commencement of discovery will not prejudice

Plaintiff as its claims fail to present plausible theories of recovery. Moreover, any potential prejudice to Plaintiff is outweighed by the Court's interest in promoting judicial efficiency.

WHEREFORE, Defendants request that this Court enter an Order staying discovery and the need to hold a Rule 26(f) Conference, prepare a joint discovery plan and scheduling order, and exchange Rule 26 disclosures until the resolution of the pending Motion to Dismiss, and for any other relief that this Court deems proper.

Respectfully submitted,

Millsap & Singer, LLC

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CERTIFICATE OF SERVICE

On December 19, 2013 a copy of the foregoing pleading was sent via first-class mail, postage prepaid to:

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/s/ Michael J. Wambolt
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